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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
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Filing Date: July 20, 2017)
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Case No.: PSH-17-0047

Issued: September 14, 2017

Administrative Judge Decision

Janet R.H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines), I conclude that the individual’s access authorization should not be restored.

I. Background

The individual is employed by a DOE contractor in a position requiring a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the individual’s financial indebtedness. In order to address those concerns, the LSO summoned the individual for a Personnel Security Interview (PSI) in September 2016 and March 2017. On June 15, 2017, the LSO sent the individual a letter (Notification Letter) advising her that the DOE possessed reliable information that created substantial doubt regarding her eligibility to continue to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guideline F (Financial Considerations) of the Adjudicative Guidelines.

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the individual testified on her own behalf. The DOE Counsel submitted eleven exhibits (Exhibits 1-11) into the record. The individual tendered two exhibits (Exhibits A-B). The exhibits will be cited in the Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.²

II. Regulatory Standard

A. Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring her access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge’s Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

² OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual's continued eligibility to hold an access authorization. The information in the letter specifically cited Guideline F of the Adjudicative Guidelines, which relates to security risks arising from financial irregularities. Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability and trustworthiness. *See* Guideline F at ¶ 18. In citing Guideline F, the LSO asserted that: (1) the individual had outstanding debts totaling \$58,624 and (2) at a September 2016 PSI, the individual asserted that she had payment plans set up that she had not utilized to lower her debt.

IV. Findings of Facts and Hearing Testimony

During an investigation for a raise in the individual's security clearance, information arose that caused the LSO to interview the individual. Exs. 10 and 11. At the September 2016 PSI, the individual admitted that the OPM investigator had previously asked about her outstanding debts and that she had started to look into settling them. Ex. 11 at 10. She asserted to the interviewer at the September 2016 PSI that she would settle her debts but had not yet had a chance to deal with them. Ex. 11 at 60, 71, 84, 87. At the March 2017 PSI, the individual stated that she had set up some payment plans, but, she had stopped paying on them because her husband had been laid off from work. Ex. 10 at 28. However, according to the information the individual provided at the September 2016 PSI, the individual's spouse was not working at that time either. Ex. 11 at 102-103, 126, 157. At the hearing, the individual admitted that the 25 debts listed in the Notification Letter were still outstanding. Tr. at 19. The majority of the outstanding debt is either student loans or medical bills. Ex. 1; Tr. at 13, 22, 36, 45. The individual stated that she was irresponsible regarding her student loans. Tr. at 26. She testified that she was making payments but cannot make any payments while she is on administrative leave, and not receiving a paycheck. Tr. at 19, 37. The individual's proposed budget shows that she could make payments on the debts were she to be reinstated. Ex. B. She concluded that she can pay off her debts, if she is reinstated. Tr. at 41-42.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witness presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's security clearance should not be restored. I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

The inability to satisfy debts, along with a history of not meeting financial obligations, can raise security concerns. *See* Guideline F at ¶ 19(a), (c). Here, the individual has numerous outstanding financial obligations totaling over \$57,000.

Conditions that could mitigate this security concern include:

- (a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) The conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

* * *

- (d) The individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

See id. at ¶ 20(a)-(b), (d). While the individual maintains that she cannot pay her outstanding debts while she is on administrative leave that is not the issue. Some of the individual's debts have been pending since at least 2006, more than ten years prior to the hearing. Those debts are principally her student loans which, in over ten years, she has made no attempt to settle. In September 2016, the individual informed the LSO at the PSI that she would endeavor to pay off her debts, yet in March 2017, she admitted that she had set up payment plans but had not been making payments. Ex. 10 at 87. Further, she had not set up a payment plan to pay off her student loans, the largest portion of her debt, because she was waiting to hear from the lender. Ex. 10 at 93. The debts are not infrequent nor did they occur under such circumstances that they are unlikely to recur; therefore, ¶ 20(a) is inapplicable. The individual admitted that she borrowed money for her student loans but did not think about repaying them. Tr. at 26. A number of the debts she attributed to her failed marriage and medical bills. Tr. at 34, 36. Unfortunately, mitigation under ¶ 20(b) requires that an individual "acted responsibly under the circumstances."

The individual has been divorced since 2012, yet she has not made an effort to pay those bills attributed to the divorce or have them removed from her credit report. As to the debts attributed to a medical emergency, the individual has not made any attempt to pay them. Therefore, she has not satisfied, ¶ 20(b). Again, the substantial portion of her debt is her student loans. She contacted the Department of Education (Education) attempting to set up a payment plan. She claims that she made some payments but could not continue while on administrative leave. However, the individual has previously claimed that she will set up a payment plan with Education but did not follow through. Ex. 10 at 92-93. While the individual claims she will make an effort to change her financial situation moving forward, she has not yet established a pattern of repayment on her outstanding debt. Hence, ¶ 20(d) is inapplicable. In summary, the evidence before me is not sufficient to resolve the individual's financial problems, and their associated security concerns, at this time.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Guideline F. After considering all of the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the individual has not brought forth sufficient evidence to resolve the security concerns associated with this guideline. I therefore cannot find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the DOE should not restore the individual's access authorization.

Janet R.H. Fishman
Administrative Judge
Office of Hearings and Appeals

Date: September 14, 2017